

3. The Debtor has failed to pay rent to Burbank due under the Lease for the post-petition period November 10, 2008 through November 30, 2008, in the amount of \$21,952.00 ("Post-Petition Rent").

Relief Requested

4. Burbank respectfully request that the Court enter an Order that compels the Debtor to immediately pay the Post-Petition Rent to Burbank.

5. Section 365(d)(3) of the Bankruptcy Code states that the Debtor must "timely perform all the obligations of the debtor...arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected...." 11 U.S.C. § 365(d)(3). In enacting section 365(d)(3) of the Bankruptcy Code, Congress intended to address the plight of landlords who, unlike professionals and other providers of goods and services to a debtor-in-possession in the ordinary course of business, are compelled to extend credit:

A second and related problem is that during the time the debtor has vacated space but has not yet decided to assume or reject the lease, the Debtors has stopped making payments due under the lease. These payments include rent due the landlord and common area charges which are paid by all the tenants according to the amount of space they lease. In this situation, the landlord is forced to provide current services – the use of its property, utilities, security, and other services – without current payment. No other creditor is put in this position...

The bill would lessen these problems by requiring the Debtors to perform all the obligations of the debtor under a lease of nonresidential real property at the time required in the lease. This timely performance requirement will insure that the debtor-tenants pay their rent, common area, and other charges on time pending the Debtors' assumption or rejection of the lease.

130 Cong. Rec. S8894-95 (daily ed. June 29, 1984) (remarks of Sen. Hatch).

6. This case presents the circumstances that Congress intended § 365(d)(3) of the Bankruptcy Code to address. The Debtor occupied and possessed the Premises post-petition, without performing its post-petition obligations under the Lease.

7. Courts have continually held that a landlord is entitled to immediate payment of post-petition, pre-rejection rental payments, pursuant to 11 U.S.C. § 365(d)(3). *See In re: Pudgie's Div. of New York, Inc.*, 202 B.R. 832 (Bank. S.D.N.Y. 1996); *see also In re: Wingspread Corp.*, 178 B.R. 305 (Bankr. D. Mass. 1995); *see also Manhattan King David Restaurant, Inc. v. Levine*, 163 B.R. 36 (S.D.N.Y. 1993); *see also In re: Rare Coin Galleries of American, Inc.*, 72 B.R. 415 (d. Mass 1987); *see also In the Matter of the Barrister of Delaware, Ltd.*, 49 B.R. 446 (Bankr. D. Del. 1985). Accordingly, the Court should enter an order that compels the Debtor to immediately pay the Post-Petition Rent to Burbank to satisfy its obligations under the Lease and § 365(d)(3) of the Bankruptcy Code.

8. Additionally, pursuant to the terms of the Lease, the Debtor is obligated to reimburse Burbank for the reasonable attorneys' fees and costs incurred by Burbank in connection with the Debtor's compliance under the terms of the Lease. *See Lease Paragraph 30 (c)*. Accordingly, Burbank respectfully requests that the Debtor be directed to pay the attorneys' fees and costs incurred by Burbank in connection with the filing and prosecution of this Motion.

WHEREFORE, Burbank respectfully requests this Court to enter an Order that compels the Debtor to immediately pay Burbank the amount of \$21,952.00, plus Burbank's reasonable

attorneys' fees and costs and grant Burbank such other and further relief as this Court deems proper and equitable.

Dated: November 21, 2008

BURBANK MALL ASSOCIATES, LLC

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of November, 2008, a copy of the **Notice of Motion and Hearing** and the **Motion of Burbank Mall Associates, LLC for entry of an Order Compelling Payment of Post-Petition Rent Pursuant to 11 U.S.C. § 365(d)(3)** were via the Electronic Case Filing (ECF) system, as appropriate, and by First Class Mail (postage prepaid) on the following attached Service List:

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